

COURTHOUSE NEWS

A Summary of Topical Highlights from decisions of the
U.S. District Court for the District of Oregon

A Court Publication Supported by the Attorney Admissions Fund
Vol. IX, No. 23, November 26, 2003

Labor

In this multi-district litigation, the named plaintiffs, on behalf of themselves and other similarly situated current and former personal lines claims representatives employed by defendant Farmers Insurance Exchange brought a collective action under the Fair Labor Standards Act of 1938, 29 U.S.C. ' 201 et seq ("FLSA"), and class actions under seven states' laws, alleging that they were owed overtime pay. Specifically, plaintiffs alleged that Farmers improperly classified them as "exempt" from the overtime requirements of the FLSA and the laws of Colorado, Illinois, Michigan, Minnesota, New Mexico, Oregon, and Washington.

After approximately 18 months of discovery and pretrial proceedings, Judge Jones held a three-week bench trial on the bifurcated issue of liability. In Findings of Fact and Conclusions of Law, Judge Jones found that Farmers improperly classified auto physical damage, certain property, and certain other claims representatives as administrative employees exempt from overtime under the FLSA and state laws, but properly classified the bodily

injury/liability and remaining claims representatives as exempt. Judge Jones also concluded that Farmers' conduct was "willful" for statute of limitations purposes and that Farmers had failed to prove its good faith defenses to liability and liquidated damages, but only for the period after the decision in Bell v. Farmers Ins. Exchange, 87 Cal.App.4th 805 (2001), which held that Farmers violated California law in failing to pay California claims representatives overtime compensation. In Re Farmer's Insurance Exchange, CV 33-1439-JO (Opinion, Nov. 6, 2003).

Local Counsel:

Barnes Ellis,
Jennifer Sammon
Mark Griffin
James Westwood

Civil Rights

A city housing inspector filed an action claiming that she was the victim of a hostile work environment because of her sex and her sexual orientation. She asserted claims under Title VII and 42 USC § 1983, and the city

moved to dismiss several of her constitutional claims. Judge Anna J. Brown granted the motion to dismiss, in part, and rejected plaintiff's First Amendment claims. First, the court determined that all of the plaintiff's alleged public statements constituted internal complaints that were not matters of public concern. Thus, plaintiff could not sustain a First Amendment retaliation claim.

Judge Brown also determined that plaintiff could not maintain a claim for violation of her right to intimate association under the First Amendment or a 14th Amendment substantive due process theory. Any such claim is only cognizable under the 14th Amendment's equal protection clause. Plaintiff asserted that she told a co-worker that she had a female partner and that, thereafter, she was physically intimidated in the presence of a supervisor and no corrective action was taken. Judge Brown held these allegations sufficient to state a claim and denied defendant's motion to dismiss on this limited basis. Fischer v. City of Portland, CV 02-1728-BR (Opinion, Nov. 18, 2003).
Plaintiff's Counsel:

2 The Courthouse News

Daniel Snyder
Defense Counsel:
Jenifer Johnston

Employment

Judge Janice Stewart analyzed recent Supreme Court opinions to decide whether a former employee attempting to maintain a disability discrimination claim could do so in light of her application for Social Security Disability Act benefits. The court examined the underlying social security record and found nothing directly contradictory or irreconcilable with her ADA claim and, thus, Judge Stewart denied a defense motion for summary judgment.

The court also rejected the employer's argument that plaintiff's claims should be precluded because she failed to submit an adequate medical release. Judge Stewart noted that the medical release and its adequacy were part of the mandatory interactive process and that an employer could not circumvent this process by unilaterally rejecting plaintiff's release form. Finally, the court noted genuine issues of material fact existed relative to whether plaintiff failed to mitigate damages. Kelley v. Sears & Roebuck, CV 01-1423-ST (Findings & Recommendation, Sept. 30, 2003; Adopted by Judge Michael W. Mosman, November 5, 2003).

Plaintiff's Counsel:
George Fisher
Defense Counsel:
Barry Alan Johnsrud (WA)

! A former bank employee was terminated for receiving allegedly inappropriate e-mail attachments from co-workers and a supervisor. He filed an action asserting claims for breach of the duty of good faith and fair dealing and invasion of privacy. Judge Janice Stewart dismissed the breach of good faith claim given an unambiguous handbook disclaimer that employment was at-will. The court also dismissed plaintiff's claim regarding the denial of a severance package as preempted under ERISA. However, the court concluded that the plaintiff had stated a claim for invasion of privacy based upon the defendant's search of a "personal" file located within his workplace computer. Judge Stewart noted the absence of any controlling Oregon law, but reviewed several comparable decisions from other jurisdictions. After considering the particular facts and circumstances presented, Judge Stewart concluded that the plaintiff's personal computer file was comparable to an employee locker used for personal belongings. She also noted that while there were bank policies prohibiting

personal use of bank computers, there was no express prohibition on the receipt of personal communications. Plaintiff sufficiently alleged that actual practice at the bank allowed for the use of a personal folder. The court also noted that none of the employees who sent the offending e-mail attachments were terminated and that this fact indicated that there was some degree of privacy recognized in the workplace. Thygeson v. US Bancorp, CV 03-467-ST (Findings & Recommendation, July 31, 2003; Adopted by Judge Anna J. Brown, October 15, 2003).

Plaintiff's Counsel:
David Griggs
Defense Counsel:
Janine Catherine Blatt